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BUSINESS DIVISION

DEC 17 3 46 PM '80

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CO.
CO.

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

MURAKAMI-WOLF-SWENSON,
a California corporation,

Plaintiff,

vs.

RDI VIDEO SYSTEMS, a
California corporation, and
DOES I-XX,

Defendants.

Case No. 532481
COMPLAINT FOR BREACH OF
CONTRACT

PLAINTIFF ALLEGES:

1. Plaintiff is and at all times herein mentioned was a corporation existing under the laws of the State of California with its principal place of business in the City and County of Los Angeles, California.

2. Defendant is and at all times herein mentioned was a corporation existing under the laws of the State of California, in the business of producing video games and equipment, with its principal place of business in the City of Carlsbad, County of San Diego, California.

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1 3. Venue is proper based under the terms of the agreement
2 and specifically paragraph 7.6 of the Animation Contract which
3 provides for venue and jurisdiction in the courts in San Diego
4 County, California.

5 4. Plaintiff is ignorant of the true names and capacities
6 of Defendants named herein as DOES I-XX, and therefore sues these
7 Defendants by such fictitious names. Plaintiff will amend this
8 Complaint to allege their true names and capacities when
9 ascertained.

10 5. On or about November 28, 1983, at the City and County
11 of Los Angeles, California, Plaintiff and Defendant entered into
12 a written Animation Contract agreement (hereinafter "Animation
13 Contract"), a true and correct copy of which is attached hereto
14 as Exhibit A and made a part hereof.

15 6. Both Plaintiff and Defendant performed all the
16 conditions, covenants and promises required by them on both their
17 parts to be performed in accordance with the terms and conditions
18 of the Animation Contract as of May 1, 1984.

19 7. Based upon the performance under the Animation Contract
20 agreement (Exhibit A), Plaintiff and Defendants entered into a
21 Letter of Agreement on May 2, 1984, which was intended to be
22 entered into by the parties under the terms of the Animation
23 Contract and specifically paragraphs 2.5 and 3.2 of the Animation
24 Contract. Other than the additional obligations and covenants
25 specifically stated in the Letter of Agreement, the terms of the
26 Animation Contract were incorporated in and made applicable to
27 the Letter of Agreement dated May 2, 1984. A true and correct
28 copy of the Letter of Agreement is attached hereto as Exhibit B

1 and made a part hereof.

2 8. Plaintiff has performed all conditions, covenants and
3 promises required by it on its part to be performed in accordance
4 with the terms and conditions of the Letter of Agreement (and the
5 terms of the Animation Contract incorporated thereto) except that
6 Plaintiff has not delivered the twenty-three (23) minutes of
7 additional animation film to Defendant which was to be delivered
8 on August 24, 1984 by the terms of the Letter of Agreement. The
9 reason that Plaintiff did not perform this condition is that
10 Defendants failed to previously perform two conditions required
11 to be performed by it prior to Plaintiff's performance, and said
12 failures by Defendant resulted in Defendant's breach of the
13 Letter of Agreement and the underlying contract.

14 9. On June 12, 1984, Defendant breached the Letter of
15 Agreement and the Animation Contract by failing to forward to
16 Plaintiff a payment due on that date in the amount of \$87,515.00.
17 This failure was a breach of contract and known to be a breach of
18 contract by Defendants based upon paragraph 7.3 of the Animation
19 Contract, which specifically states that each time provision set
20 forth is of the essence. The June 12, 1984 payment not paid by
21 Defendants represented the second of four (4) equal payments to
22 be forwarded to Plaintiff prior to the delivery of twenty-three
23 (23) minutes of animated film.

24 10. Defendants continued in breach of the contract by
25 failing to pay to Plaintiff the third and fourth of the four
26 equal payments of \$87,515.00, due to Plaintiff prior to delivery,
27 on July 17, 1984 and August 24, 1984. As well, Defendants failed
28

1 to pay additional costs as per its obligations under the Anima-
2 tion Contract for additional frames required and costs of
3 recording voice-over sessions.

4 11. As a result of Defendant's breach of the contracts
5 attached hereto as Exhibits A and B, Plaintiff has been damaged
6 in that he has not received the revenues to which he is entitled
7 under the terms of the agreements and has incurred losses due to
8 obligations to a third party, Taii Doga Company, Ltd., a Japanese
9 company, whose participation in the production of the twenty-
10 three (23) minutes of animated film was anticipated by Plaintiff
11 and Defendant and was specifically set forth in Paragraph B of
12 the Animation Contract, all to Plaintiff's damage in the sum of
13 \$265,679.00. (Copies of invoices numbered 1801, 1804, 1805, 1806
14 delivered to Defendant and noting said damages are attached
15 hereto as Exhibit C.)

16 12. Plaintiff has been further damaged in the amount of
17 attorneys' fees and costs to be paid in prosecuting this action
18 and, as per paragraph 7.5 of the Animation Contract, is entitled
19 to receive and recover from Defendants all reasonable attorneys'
20 fees and costs of suit incurred if Plaintiff emerges as
21 prevailing party in this action.

22 WHEREFORE, Plaintiff prays judgment against Defendants, and
23 each of them, as follows:

- 24 1. For compensatory damages in the sum of \$265,679.00;
25 2. For interest from and after June 13, 1984;
26 3. For reasonable attorneys' fees according to proof;
27 4. For costs of suit incurred herein; and
28

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1 5. For such other and further relief as the court may deem
2 just and proper.

3
4 DATED: December 10, 1984

COHEN AND LUCKENBACHER

5
6 BY: 
7 MARTIN COHEN

THIS AGREEMENT is entered into this 25 day of December, 1983, by and between RDI VIDEO SYSTEMS, a California corporation ("RDI") and MURAKAMI, WOLF, SWENSON PRODUCTIONS, LTD., a California corporation ("MWS") for the following purposes:

RECITALS

A. RDI is now in the process of researching and developing a highly sensitive and confidential interactive laser disk video game for home use known as "Thayer's Quest." RDI intends to incorporate ^{PRIME T.V. & G.W.} ~~prime~~ quality animation, sound and original score music into "Thayer's Quest."

B. MWS is a contract animation house specializing in providing the type of animation desired by RDI for "Thayer's Quest" as described in the preceding paragraph. MWS specializes in the design and layout of animation, and then utilizes Toei Doga Company, Ltd., a Japanese company, for the drawing of the final animation cels.

C. RDI and MWS desire to enter into this Agreement for the purpose of RDI contracting with MWS for the development of the animation, sound and music score for "Thayer's Quest."

NOW THEREFORE, in consideration of the following mutual promises and covenances, RDI and MWS do hereby agree as follows:

1. SERVICES BY MWS. MWS shall provide the following services to RDI under this Agreement:

1.1 MWS, except to the extent set forth in paragraph 2, below, shall design, layout, draw and film eight (8) minutes of ^{prime TV 60 sec.} ~~movie~~ movie quality animation for RDI to use and incorporate into "Thayer's Quest." Said animation shall include character voices taped by professional actors or actresses employed or retained by MWS, and a first quality music score originally written for said animation film. [It is understood and agreed that the layout, design, pencil testing and the filming of said animated film shall be directly completed by MWS, but that MWS may delegate the actual drawing of the animation cels to Toei Doga Company, Ltd.

1.2 MWS shall also prepare additional animation film, in the manner described in subparagraph 1.1, above, along the same story line for "Thayer's Quest" for up to an additional forty-nine (49) minutes of animation beyond the original eight (8) minutes described in subparagraph 1.1, above. The cost for each minute of such additional animation is set forth in paragraph 3.2, below. MWS guarantees that it shall use the same professional actors and actresses for the character voices in each additional minute of animation and the same music writers

and music theme in each additional minute of animation as those utilized for the original eight (8) minutes of animation described in subparagraph 1.1, above.

1.3 For each original or subsequent minute of animated film, MWS shall utilize scripts, story lines, story boards and backgrounds prepared and delivered to MWS by RDI. All animation design and layout work completed by MWS for each original or additional minute of animated film shall be completed at RDI's Carlsbad, California facility during normal business hours, and MWS shall utilize at all times Fredrick Wolf and at least ~~three~~ ^{two} additional people in completing said design and layout work at RDI's Carlsbad, California facility. *WJN*

1.4. In addition to the original eight (8) minutes of animation described in subparagraph 1.1 and each additional minute of animation described in subparagraph 1.2, both above, MWS shall prepare for RDI, free of charge, all film frames for "Thayer's Quest" necessary for all exit options, scores, or text in accordance with the design of same prepared by RDI and delivered to MWS.

1.5 MWS shall not be responsible for the transfer of the final animation film to a video tape for the original eight (8) minutes of animation described in subparagraph 1.1, above. MWS shall be responsible for the transfer of the final animation film to a one inch C master video tape work print for each

additional minute of animation described in paragraph 1.2, above.

2. SERVICES TO BE PERFORMED BY RDI. RDI shall perform for the benefit of MWS the following services under this agreement:

2.1 RDI shall design and deliver to MWS all scripts, story lines, story boards and backgrounds for each original or additional minute of animated film to be prepared by MWS for "Thayer's Quest."

2.2 RDI shall be solely responsible for the transfer of the original eight (8) minutes of final animated film to a one inch C master video tape work print.

2.3 RDI specifically reserves the sole right and discretion to finally approve all voice talent used by MWS for the voice characters in each original or additional minute of animated film, all original music scoring used by MWS in each original or additional minute of animated film and all film frames used for exit options, scores or text in each original or additional minute of animated film.

2.4 RDI further specifically reserves the sole right and discretion to finally approve all pencil tests and the final animated film of each original or additional minute of animation

prepared by MWS under this Agreement.

2.5 RDI shall from time to time instruct MWS to commence the preparation of additional minutes of animated film as described in subparagraph 1.2, above. RDI reserves the right to limit this Agreement to the original eight (8) minutes of animated film described in subparagraph 1.1, above, but it is the intent of RDI to order additional minutes of animated film from MWS under this Agreement up to a total of fifty-seven (57) minutes of original and additional animated film. [RDI shall have the sole discretion to determine how many additional minutes of animated film it desires from time to time under this Agreement, but shall consult with MWS at the time that RDI makes a decision to order additional minutes of animated film so that MWS will be able to complete any such additional minutes on time.] MWS and RDI shall jointly sign a letter agreement specifying the additional minutes of animation film ordered by RDI under this Agreement from time to time and the completion and delivery date for such additional animated minutes. Notwithstanding the foregoing, the price to be charged by MWS under this Agreement for each additional minute of animated film shall be that set forth in subparagraph 3.2, below.

3. PAYMENT. RDI shall pay MWS for its services under this Agreement as follows:

3.1 For the original eight (8) minutes of animated film described in subparagraph 1.1, above, a total sum of \$125,000.00, which shall include the cost of all professional talent used in the taping of all character voices, music scoring and music performance in said original animated film. Said payment shall be made by RDI in accordance with the following payment schedule.

3.1.1 \$31,250.00 on the date of this Agreement first set forth above. 12/1

3.1.2 \$31,250.00 on the 30th calendar day after the date of this Agreement. 12/27

3.1.3 \$31,250.00 on the 51st calendar day after the date of this Agreement. 1/18

3.1.4 The balance of the contract price, in the sum of \$31,250.00, on the date MWS delivers the final animated film to RDI. 2/15

OK AS ORDERED
WRITTEN BY
OW

3.2 For each additional minute of animated film ordered by RDI under this Agreement, as described in subparagraph 1.2, above, RDI shall pay MWS the sum of \$15,220.00, which payment shall include all costs of professional talent used in the taping of the voice characters, the music scoring and the music performance for each additional animated minute. RDI shall make four equal installment payments to MWS in payment of each additional animated minute in accordance with a payment schedule to be determined by the parties as set forth in the joint signed letter(s) described in subparagraph 2.5, above, but with the

first payment due when said letter is signed by the parties and with the last payment due when the video tape containing the final animated film for the additional animated minutes covered by said letter is delivered by MWS to RDI.

4. COMPLETION DATE. MWS shall complete all of its services described in paragraph 1, above, on the following dates.

4.1 Delivery of the final animation film for the original eight (8) minutes described in subparagraph 1.1, above, shall be made by MWS to RDI on or before January 30, 1984.

4.2 For each additional minute of animated film ordered by RDI, as described in subparagraph 1.2, above, the parties shall determine in the future completion date(s), which shall be set forth in the joint letter to be signed by the parties representing the order for additional animated minutes as described in subparagraph 2.5, above.

5. PROPRIETARY INTEREST. RDI shall at all times solely own all right, title and interest to all copyrights for all characters incorporated into "Thayer's Quest," all copyrights to all voice tracks used for all characters in "Thayer's Quest," all copyrights to all music scoring and music performance utilized in "Thayer's Quest," and all scripts, story lines, story boards, backgrounds, layout drawings; cel drawings, actual painted cels, pencil tests, animated film, video tape, masters, audio

tapes, negatives, lower prints, sound track additional artwork and treatments utilized in the design, preparation or completion of any portion of the "Thayer's Quest" film as described in this Agreement. MWS shall upon request by RDI execute all documents reasonably necessary to vest in RDI the ownership interests described in this paragraph. MWS shall only be compensated by the contract payments described in paragraph 3, above, and shall have no right, title or interest in any of the matters described within this paragraph. Furthermore, MWS shall not have, own or claim any royalty interest in "Thayer's Quest," the voice, sound or music tracks for "Thayer's Quest" or in any other component part of "Thayer's Quest." MWS acknowledges and understands that "Thayer's Quest", independently and as part of RDI's interactive laser disk home system, is the sole idea and development of RDI and that the interest of MWS in "Thayer's Quest" is restricted and limited as set forth in this Agreement. MWS shall not receive any film or press credit for its participation in the development of the animated film for "Thayer's Quest," and MWS shall not directly or indirectly make, allow or suffer any public media information release at any time concerning its involvement in the "Thayer's Quest" project as described in this Agreement.

6. CONFIDENTIALITY. MWS understands, acknowledges and agrees that any information concerning the "Thayer's Quest" project divulge by RDI to MWS during the latter's performance under this Agreement is sensitive, confidential and the sole property of RDI. MWS further understands, acknowledges and

agrees that the unauthorized or unnecessary public disclosure of any of such information by MWS could substantially harm RDI's development of the "Thayer's Quest" project, and cause substantial monetary damages to RDI. Thus, MWS agrees that each agent, employee and contractor used by MWS during its performance under this Agreement shall sign a Non-Disclosure Agreement in favor of RDI covering such information in the form set forth in Exhibit "A" attached hereto and by this reference incorporated herein.

7. MISCELLANEOUS.

7.1 This Agreement, together with all amendments or exhibits, if any, incorporated herein, constitutes the entire understanding by and between the parties hereto with respect to the subject matter hereof, and shall supersede all previous negotiations, discussions and preliminary agreements, whether oral or in writing. No party hereto shall be entitled to rely upon any representation, warranty or promise allegedly made by any other party hereto unless the same is expressly set forth herein.

7.2 Each of the parties hereby acknowledges that it has negotiated for the specific consideration to be received by it hereunder and that damages would be an inadequate remedy for the breach of any part or provision of this Agreement by any other party. Each of the parties hereto shall be entitled to enforce the terms of this Agreement by an action either for

specific performance or for injunctive relief, or both, to prevent the breach or continued breach of this Agreement.

7.3 Time, and each of the time provisions set forth within this Agreement, are of the essence.

7.4 No waiver or waivers of any term, provision, covenant or condition of this Agreement, or of any breach by any party to this Agreement of any term, provision, covenant or condition of this Agreement, whether orally, in writing, by conduct or otherwise, by any other party to this Agreement in any one or more instance, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision, covenant or condition of this Agreement, or of any further or subsequent breach thereof by the party permitting such breach.

7.5 In the event that any party to this Agreement brings any action or other legal proceedings in any court or before any arbitration tribunal against any other party to this Agreement to enforce or declare any rights herein created, or to bring about or to declare the termination, cancellation, reformation or rescission of this Agreement, or any part or provision herein, the prevailing party or parties in such action, legal proceeding or arbitration shall be entitled to receive and recover from the other party or parties all reasonable attorneys fees and costs of suit incurred in connection therewith by said prevailing party or parties.

7.6 This Agreement shall be interpreted and construed under the laws of the State of California, and the parties hereto agree that any action or legal proceeding relating to this agreement shall be instituted and prosecuted in the courts in San Diego County, California. Each party to this agreement consents to the personal jurisdiction of the courts in San Diego County, California and waives the right of any change of venue.

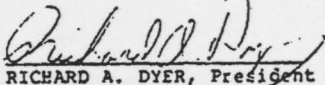
7.7 Any notice permitted or required under the terms and provisions of this Agreement shall be in writing and personally delivered or sent by first class mail, postage prepaid, registered or certified, to the parties at their addresses appearing in this Agreement, or to such other address as any party may notify the other party or parties hereto of in writing. Any notice given in the manner herein provided shall be effective when personally served or seventy-two (72) hours after deposit in the United States mail in California, first-class postage prepaid and properly addressed.

7.8 This Agreement shall be binding upon and shall inure to the benefit of each of the respective parties hereto, and to their respective heirs, personal representatives, permitted assigns and successors in interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above, irrespective of the actual dates on which their respective signatures are hereinbelow affixed.

RDI VIDEO SYSTEMS, INC.,
a California corporation

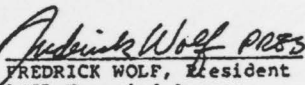
By:



RICHARD A. DYER, President
2261 Cosmos Court
Carlsbad, CA 92008

MURAKAMI, WOLF, SWENSON
PRODUCTIONS, LTD., a
California corporation

By:



FREDRICK WOLF, President
1463 Tamarind Avenue
Hollywood, CA 90028

(A-1P3-10)

RDI
Video Systems

#9018

LETTER OF AGREEMENT

between

RDI VIDEO SYSTEMS

and

MURAKAMI, WOLF, SWENSON PRODUCTIONS, LTD.

This Letter of Agreement entered into May 2, 1984 is for the purpose of contracting Murakami, Wolf, Swenson Productions, Ltd. to produce twenty-three (23) additional minutes of animation film of "Thayer's Quest" for RDI Video Systems as stated in paragraphs 2.5 and 3.2 of the original Animation Contract, dated November 28, 1983.

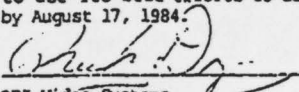
RDI Video Systems shall pay Murakami, Wolf, Swenson Productions, Ltd. for services outlined in this Letter as follows:

The total sum of \$350,060.00 (based on \$15,220.00 per minute), payable in four (4) payments of \$87,515.00.

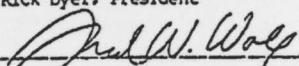
Said payment shall be made by RDI Video Systems in accordance with the following payment schedule:

\$56,421.00 on May 3, 1984 (\$87,515.00 less an advance payment of \$31,094.00 paid to Murakami, Wolf, Swenson Productions, Ltd. March 8, 1984)
\$87,515.00 on June 12, 1984
\$87,515.00 on July 17, 1984
\$87,515.00 on completion, delivery and approval of the final animated film on or before August 24, 1984.

Murakami, Wolf, Swenson Productions, Ltd. agrees to deliver the complete twenty-three minutes by August 24, 1984. Murakami, Wolf, Swenson agrees to use its best efforts to deliver the complete twenty-three (23) minutes by August 17, 1984.



RDI Video Systems
Rick Dyer, President



Murakami, Wolf, Swenson Productions Ltd.
Frederick Wolf, President

MURAKAMI WOLF SWINSON
1463 TAMARIND AVE.
HOLLYWOOD, CALIF.
90028-213 462-6474

May 3, 1984

RDI VIDEO SYSTEMS
2261 Cosmos Court
Carlsbad, CA 92008

INVOICE #1801
CUSTOMERS
ORDER NO.
MWS #5013

"THAYER'S QUEST" Final 23 Minutes

1/2 of final recording session of voice over talent

\$4,425.00

TOTAL DUE

\$4,425.00

Pd 3,591.00

\$834 - Balance Due

Oct 17 1980

EXHIBIT C (1)

MURAKAMI WOLF SWENSON
1463 TAMARIND AVE.
HOLLYWOOD, CALIF.
90028. 213 462-6474

June 1, 1984

R D I VIDEO SYSTEMS
2261 Cosmos Court
Carlsbad, CA 92008

INVOICE #1804

CUSTOMERS
ORDER NO
MWSX #9018

"THAYERS QUEST" Final 23 minutes of animation

Total contract price - \$350,060 @ \$15,220 / minute:

Payment #2 - 1/4 total contract price

\$87,515.00

Total Due - June 12, 1984

\$87,515.00

PLEASE MAKE CHECKS PAYABLE TO
"MURAKAMI WOLF SWENSON, INC."

EXHIBIT C (2)

MURAKAMI WOLF SWENSON
1463 TAMARIND AVE.
HOLLYWOOD, CALIF.
90028. 213 462-6474

June 1, 1984

R D I VIDEO SYSTEMS
2261 Cosmos Court
Carlsbad, CA 92008

INVOICE #1805

CUSTOMERS
ORDER NO.

"THAYERS QUEST"

Cost of additional frames preceding and following
each node as requested

\$2,300.00

TOTAL DUE

\$2,300.00

EXHIBIT C (3)

MURAKAMI WOLF SWENSON
1463 TAWARIND AVE.
HOLLYWOOD, CALIF.
90028. 213 462-6474

July 13, 1984

R D I VIDEO SYSTEMS
2261 Cosmos Court
Carlsbad, CA 92008

INVOICE #1806

CUSTOMER
ORDER NO

MWS #9018

"THAYERS QUEST" Final 23 Minutes of Animation

Total contract price - \$350,060 @ \$15,220 / minute:

Payment #3 - 1/4 total contract price

\$87,515.00

Total Due - July 17, 1984

\$87,515.00

PLEASE MAKE CHECKS PAYABLE TO
"MURAKAMI WOLF SWENSON, INC."

EXHIBIT C (4)